



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/19458/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
On: 11 August 2015**

**Decision and Reasons
Promulgated
On: 24 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS CHANNA PETER-GAY DURRANT
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. I shall refer to the appellant as the “secretary of state” and the respondent as “the claimant.”
2. The secretary of state appeals against the decision of First-tier Tribunal Judge Majid, who allowed the claimant's appeal against a decision of the secretary of state dated 8 April 2014 refusing her application for leave to remain in the UK.

3. Notice of the hearing, setting out the date, time and place, was given to the claimant at her address on record. There has been no request for any adjournment of the appeal nor have any reasons been given explaining the non attendance of the claimant or her representatives. In the circumstances, I consider that it is in the interests of justice to proceed with the appeal.
4. At the hearing before the First-tier Tribunal, both parties were represented. The Judge was informed at the outset that the claimant's case was being reviewed by the Home Office. He did not have any papers in the possession of the Home Office. Accordingly it was agreed between the parties that the appeal be adjourned pending a review of the claimant's case.
5. The Judge refused the adjournment so as to 'avoid clogging up the system'. His action would help the expeditious resolution of cases.
6. The Judge stated that having regard to the oral and documentary evidence as well as submissions at his disposal "... I decide this case as indicated above and expressly state that, in case of a 'negative' review of the appellant's case by the Home Office, she can come to the Tribunal. For clarity I must say that, to save any anxiety to the appellant, I express my decision as 'Appeal allowed.'"
7. On 10 June 2015, First-tier Tribunal Judge Mark Davies granted the secretary of state permission to appeal that decision. He stated that the Judge's conclusions reached in the appeal were wholly inadequate and he has given no good reason whatsoever in declining to adjourn the hearing when both parties had agreed to that course of action. Nor was there any indication "whatsoever" on what basis the Judge allowed the appeal.
8. At the hearing on 11 August 2015, Mr Melvin relied on the grounds set out in the application for permission to appeal. He submitted that there were no cogent or clear reasons for adopting the approach taken. It is therefore unclear on what basis the appeal was allowed. There was no indication that the appeal is allowed on the facts under the immigration rules or the Human Rights Convention, nor was there any indication that the Judge found that the decision appealed against was not in accordance with the law.
9. The Judge erred in adopting that approach "to somehow protect" the appellant from any adverse decision upon review. The procedure rules do not permit a Judge to act in this way.
10. Mr Melvin requested that if the appeal of the secretary of state were allowed, there should be a short (30 day) adjournment for the re-making of the determination as the preliminary view taken by the secretary of state is that the appellant and her two Jamaican sons will be granted leave to remain for 30 months in the UK. However, the final process is yet to be completed.

Assessment

11. I find that the Judge has allowed the appeal simply to avoid any anxiety to the claimant.
12. In the circumstances, it is unclear on what basis the appeal was allowed. I accordingly find that the Judge has materially erred in law by adopting that approach. I accordingly set aside the decision of the First-tier Tribunal Judge.
13. I accede to Mr Melvin's request for an adjournment of the re-making of the determination on the basis that the secretary of state is in the final process of granting the claimant and her two sons leave to remain for 30 months in the UK.
14. I accordingly grant the request for an adjournment for one month from the date of promulgation of this determination.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

List for a CMR after the expiry of one month after the date of promulgation of this decision

No anonymity direction is made.

Signed

Date: 20 August 2015

Deputy Upper Tribunal Judge Mailer